APPENDIX A — JUDGMENT OF THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF TEXAS MCALLEN DIVISION ENTERED DECEMBER 30, 2002

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

CIVIL ACTION NO. M-02-245

IN RE: LISA VELA WATSON,

debtor

RAMON WALTER VELA, WAUQUIN VELA, RICHARD W. VELA, JALINDA JOYCE BISSETT, REBECCA LEE VELA AND LISA DEANNA VELA WATSON,

plaintiffs

VS

JESUS M. CASTELLANO AND LA CASA DEL NYLON, A TEXAS PARTNERSHIP, CONSISTING OF ABRAHAM GALONSKY AND ISRAEL LIAZKA,

defendants.

JUDGMENT

Appellants filed this case as an appeal from a decision of the United States Bankruptcy Court in Adversary No. 95-24277-M-13. The statement of the case and the facts

of the case are evidenced by the record, and both parties filed their briefs herein. This Court, after hearing oral argument and considering the record and the briefs on file, AFFIRMS in all aspects the judgment of the United States Bankruptcy Court for the reasons stated on the record and stated herein.

In their first appeal, the Appellants, including the debtor, Lisa Vela Watson ("Lisa"), argued that the Bankruptcy Court erred in finding that certain property was properly foreclosed upon and in finding that the Appellants owed rents and attorney's fees in connection with the foreclosure. The Appellants were beneficiaries of a testamentary trust created by their great-uncle, Raul Vela, who died in September 1984. The trust consisted of the surface rights to 2,490 acres of real property located in Hidalgo County. The trustee was the Appellants' father and the Settlor's nephew, Rudy Vela, who received the mineral rights to the property under the will.

The trust provided that one-quarter of the property be distributed to each of the three male beneficiaries at age 35, and the remaining one-quarter of the property be distributed in equal parts to the three female beneficiaries as they attained the age of 40. The trust contained a spendthrift provision that prevented the beneficiaries from encumbering, assigning, or disposing of their interest in the trust. On December 2, 1992, Ramon Vela ("Ramon") turned 35. On December 28, 1992, Ramon purported to convey by quitclaim his interest in the trust property to his siblings in exchange for ten dollars.

The Trustee was unable to pay the federal estate taxes or property taxes. The amount of the delinquent taxes eventually grew to more than $800,000. A federal tax lien was filed

agai[illegible]ist the property. To avoid foreclosure by the taxing auth[illegible]orities, the Trustee borrowed the money from the App[illegible]llees to pay the taxes. The note was secured by a deed of tr[illegible]ust on the trust property. Both the note and the deed of trust were executed by the Trustee in January 1993. The loan beca[illegible]me delinquent and on June 6, 1995, the Appellees held a for[illegible]eclosure sale of the property.

[illegible]One day before the foreclosure, Lisa filed a bankruptcy petit[illegible]ion. As part of the Chapter 13 bankruptcy of Lisa, the App[illegible]llants filed an adversary proceeding in the Bankruptcy Cou[illegible]t requesting declaratory judgment that: (1) the part of the p[illegible]roperty conveyed by Ramon to Lisa was protected by the [illegible]utomatic stay provision of the Bankruptcy Code and that [illegible]the foreclosure violated the automatic stay, and (2) beca[illegible]use Ramon reached the age of 35 December 1993, one-[illegible]quarter of the property was no longer in trust in January 1993 [illegible]and could not be encumbered by the Trustee.

[illegible]The Bankruptcy Court disagreed with the Appellants and held [illegible]that the part of the property purportedly conveyed by Ram[illegible]on to Lisa was burdened by a spendthrift provision and [illegible]was therefore not protected by the automatic stay. The Bankruptcy Court also found that the Trustee had auth[illegible]rity to execute the note and deed of trust as to all of the prop[illegible]erty under the "winding up" provision of the Texas Prop[illegible]erty Code. Finally, the Bankruptcy Court found that beca[illegible]se the Appellants did not relinquish possession of the prop[illegible]erty, the Appellants owed the Appellees $102,000 in rents [illegible]and $10,000 in attorney's fees. Appellants appealed.

Appendix A

In the first appeal, the Honorable Richardo H. Hinojosa adopted the finding of facts entered by the Bankruptcy Court. *See* M-98-212. As to the conclusions of law, Judge Hinojosa held that unless the Bankruptcy Court retroactively lifts the automatic stay created when Appellant Lisa Vela Watson filed the Chapter 13 proceeding, the stay was still in effect at the time of the subject foreclosure. *Id.* The case was remanded for further proceedings consistent with this ruling. *Id.*

On remand, the Bankruptcy Court retroactively annulled the automatic stay, found no equity in the property, and found that the ability of the debtor to reorganize was questionable. The court followed *Jones v. Garcia*, where the Fifth Circuit noted that it is "well-settled that 'actions taken in violation of the automatic stay are not void, but rather they are merely *voidable*, because the bankruptcy court has the power to annul the automatic stay pursuant to section 362(d)'[1]" 63 F.3d 411, 413 (5th Cir.1995) (citing, e.g., *Piece v. Global Marine Drilling Co.*, 900 F.2d 846, 850 (5th Cir. 1990)). As noted by the Bankruptcy Court, some courts consider two factors in deciding whether to annul the automatic stay: (1) whether the creditor was aware of the bankruptcy proceeding; and (2) whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor. *Jones*, 63 F.3d at 412, citing *In re National Environmental Waste Corp.*, 129 F.3d 1052, 1055 (9th Cir. 1997). This Court finds that the Bankruptcy Court did not commit error in retroactively annulling the automatic stay.

---

1. "A case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause." 11 U.S.C. § 350(b).

Appendix A

Appellants also complain of the Bankruptcy Court's findings of facts. Under 11 U.S.C. § 362(g)(1), the Appellees/ Movants have the burden of proof as to Debtor's equity in the property. The debt exceeded $900,000.00 at the time the bankruptcy was filed. Here, the Appellants made a judicial admission in their discovery responses that as of "June 5, 1995, the Fair Market Value of [her] interest, if any, . . . was less than $900,000.00." It is, therefore, undisputed that the Debtor had no equity in the property. In addition, under 11 U.S.C. § 362(g)(2), Appellants have the burden of proving that they have the ability to reorganize. For reasons stated on the record and those contained within the record, the Appellants fail to meet this burden. The Court does not find the Bankruptcy Court's findings of fact to be clearly erroneous.

The decision of the Bankruptcy Court is hereby **AFFIRMED**.

ENTERED this 30th day of December, 2002 at McAllen, Texas.

s/ Randy Crane
HON. RANDY CRANE
UNITED STATES DISTRICT JUDGE

APPENDIX B — JUDGMENT OF THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF TEXAS MCALLEN DIVISION ENTERED MARCH 28, 2001

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

CIVIL ACTION NUMBER

M-98-212

RAMON WALTER VELA, *et al.*,

Appellants

VS.

JESUS M. CASTELLANO and LA CASA DE NYLON, a Texas Partnership consisting of Abraham Galonsky and Israel Liazka

JUDGMENT

Appellants filed this case as an appeal from a decision of the United States Bankruptcy Court in Adversary No. 96-2053-M. The statement of the case and the facts of the case are evidenced by the record on appeal and both parties filed their briefs herein. The Court, after hearing oral argument and considering the pleadings on file, affirmed in all aspects, save one, the judgment of the United States Bankruptcy Court for the reasons stated on the record.

Appendix B

The Court is of the opinion that the Findings of Fact entered by the Bankruptcy Court in this action on April 16, 1998, should be affirmed in their entirety. As to the Conclusions of Law adopted in the same instrument of April 16, 1998, the Court is of the opinion that unless the Bankruptcy Court retroactively lifts the automatic stay created when Appellant Lisa Vela Watson filed a Chapter 13 proceeding, the stay was still in effect at the time of the subject foreclosure. In all other respects consistent with this ruling, the Court believes the Bankruptcy Court's Conclusions of Law should be affirmed. On the matter of the automatic stay, the Court is of the opinion that the action should be remanded for further proceedings consistent with the Court's ruling. For the reasons stated herein and on the record, it is, therefore,

ORDERED, ADJUDGED and DECREED that the United States Bankruptcy Courts Order is hereby AFFIRMED in part, REVERSED in part, and REMANDED for further proceedings.

DONE on this 28th day of March, 2001, at McAllen, Texas.

s/ Ricardo H. Hinojosa
Ricardo H. Hinojosa
UNITED STATES DISTRICT JUDGE